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Needed for Automobile Insurance Regulation--A Gyroscope

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Introduction

The automobile insurance industry and the states' systems for regulating this highly important economic service are being bombarded with criticism. From all sides come complaints and allegations of shortcomings and deficiencies. Just a glance at the ranks of the critics, which include social scientists, newspapers, legislators, some regulators themselves, and even a few industry spokesmen, suggest that the obvious dissatisfaction is based on a mixture of justification and misunderstanding.

Some of the questions repeatedly asked are: Why is the price of automobile liability insurance so high? Why is it difficult for some drivers to obtain coverage in the company of their choice and in amounts they desire, requiring them to seek coverage in an assigned risk plan? Do some people pay too much for insurance and others too little?

These cogent questions center on two primary issues—cost and availability of insurance. If there is a single thread running through the criticism, it is that regulation has failed to serve the interests of some particular group of persons. Perhaps it is an indication of the industry's failure to communicate with its customers that increased cost of automobile insurance is hotly protested, while the inflationary spiral in cost of most every service commodity is accepted with relative calm. That criticism should focus on these points should not be surprising nor difficult to understand. It is a natural and logical result of the current social and political enthusiasm to protect the consumer.

Insurance regulations must be designed to protect the interests of particular classes of persons who find it difficult or expensive to obtain insurance. However, the critics too frequently

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fail to observe that regulation must protect all groups having an interest in insurance.[1]

People who are now insured, people who will want insurance in the future, people who presently want insurance but have difficulty obtaining it, people who have invested their money in insurance companies and people who now have or will have losses recoverable from insurers all have primary interests in automobile insurance. These interests must be protected as a matter of public policy.[2]

The purpose of automobile insurance regulation should be to equitably balance the interests of all persons having a primary stake in automobile insurance. Regulation will not serve its ideal purpose if used as a tool by which one group can promote its interests to the unreasonable detriment of others. Whatever its form, regulation should function like a gyroscope. In this "era of the consumer", marked as it is by proposals ranging from a cabinet-level Federal Department of Consumer Affairs to local ombudsmen, there is no truer guide for regulators and legislators to follow.

The necessity for this balancing of interests may be evident, but the achievement of an equitable balance is inhibited by three factors: (1) primary interests often are diametrically opposed, (2) the political strengths of different interests are often unequal, and (3) regulators do not always think in these terms. This article will discuss the difficulty in achieving a proper balance of interests in two problem areas: the cost of auto insurance and market availability.

COST OF AUTOMOBILE INSURANCE

Present rates must be calculated to cover future accidents. The process of calculating these rates is not positioned on crystal gazing.

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[1] It is a fairly well accepted principle that automobile insurance should be regulated. The social need for automobile insurance, the inferior bargaining position of the average automobile insurance buyer, the unilateral nature of the contract after the insured pays for his insurance, and the need to protect third party claimants are just some of the reasons for such regulation. For a general discussion of the need for regulation of the insurance industry, *see* E. PATTERSON, ESSENTIALS OF INSURANCE LAW 2-3 (2d ed. 1957).

[2] The designation of all other interests as secondary is not intended to indicate that other groups do not have a substantial financial stake in automobile insurance or that they do not consider themselves as being primarily interested. These interests would include all those employed by automobile insurance com-

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Neither is it an exact science. Present rates can be determined with substantial accuracy by collecting data on past experience. Given an adequate accumulation of past loss and expense statistics, as well as data on inflationary trends, it is possible to predict the cost of next year's automobile accidents. Once this cost is known, rates can be calculated. This process is so sophisticated that it is also possible to do this for particular classifications of drivers.

At the heart of the actuarial process of predicting the future is the process of gathering a significant quantity of quality data concerning past experience, and the essential classification of this data so that raw statistics are given meaning. Since few companies are large enough to accumulate enough information on their own, the vast majority use rating bureaus to gather, refine and interpret needed data. Based on these results, each company can design its own pricing program by considering, among other things, its cost of operation, underwriting limitations, marketing system, objectives and competition. That, of course, is an oversimplified explanation of how companies in a free market situation would determine rates for auto insurance, even in the absence of regulation.

All states regulate the prices which companies charge for automobile insurance, but there is a substantial difference in the degree of state involvement. In one instance, the state itself gathers statistics and promulgates the rates and forms to be used by all insurers.[3] In two states, companies are required to hold membership in a statutory rating bureau which promulgates the rates and forms.[4] In a few states there is currently an open competition approach to regulation, permitting price levels to be set by competitive forces. The commissioner steps into the rating procedure only if competition is endangered or statutory rating standards are not met.[5] The remaining states require the companies to file their proposed rates with the commissioner who, in

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panies, independent insurance agents and brokers and insurance regulators themselves.

[3] Texas. In Massachusetts, the Commissioner does promulgate the rate for compulsory automobile liability insurance, but companies are allowed to deviate downward.

[4] North Carolina and, for physical damage only, Virginia.

[5] California was the first state to enact this type of law, followed recently by Florida, Georgia, Idaho and Montana. This type of law will be further explained below. New York has recently enacted a modified open-competition type law.

turn, may disapprove the rates if they do not meet the statutory standard. The law either requires the commissioner to approve rates before they are put into effect or permits him to disapprove rates after they become effective.[6]

The insurance laws of every state prohibit discriminatory rates. This standard, and industry efforts to carefully observe it while seeking ways to equitably apportion the cost of insurance among policyholders, is not well understood. Popular misconceptions relating to the insurance rate classifications system appear to be the source of much criticism being leveled at automobile insurance.

One approach to the rating problem is to require each company to charge everybody the same price. Just calculate the total loss potential, add the expense factors, put in a little extra for inflation and a pinch of something for profit, and serve in equal portions to all buyers. This recipe, however, would prove unpalatable to almost everyone. A rural driver who has never had an accident and only drives his car to town for shopping on Saturdays and to church on Sundays would justifiably believe that his interests were being sacrificed in favor of city drivers and others having a greater accident potential. He would soon look around for another company which carefully confined its business writings to those least likely to be involved in an accident, and therefore could afford to charge a lower uniform rate. Present regulation has rejected the flat rate approach as inequitable.[7]

The task of fairly spreading loss costs in a practical and acceptable manner led to the development of a risk classification system. It is common knowledge that the frequency of accidents varies in different geographical locations. More accidents occur in the heavy traffic congestion of urban areas than in sparsely populated rural areas. More physical damage losses can be expected in areas where floods and hurricanes are common than where such natural calamities are unknown. The cost of living

[6] For automobile insurance in the states of Delaware, Idaho, Indiana, Louisiana, Maine, Missouri, Massachusetts (except compulsory auto liability insurance), Ohio, and Wyoming and the District of Columbia, rates are subject to subsequent disapproval. In the remainder of the states, rates are subject to prior approval.

[7] Occasionally bills are introduced in some of the state legislatures proposing various forms of "flat rate" and are always rejected. For example, in 1968, H.B. 4064 was introduced in Massachusetts which provided for uniform rates as to all territories in Massachusetts. It was soundly defeated.

varies from one place to another, as does the cost of medical services, wage losses, automobile repair, and all the other elements that might go into reparations for accident loss.

The manner in which an automobile is utilized will also affect the likelihood of an accident. Commercial vehicles such as trucks, buses and taxicabs are driven substantially more than the ordinary family car and are more likely to be involved in accidents. Similarly, a car driven to work each day is normally exposed to more potential accident situations than a car not driven to work.

In addition to location, there are other factors which past experience indicates are statistically reliable indicators of future accident frequency. A current popular rating plan embodies some two hundred and sixty rating variations based on these factors.

Obviously, it is not possible to predict whether a specific driver will have an accident next year. It is possible, however, to predict that all drivers under twenty-five, as a group, will have accidents at more than twice the rate of other drivers. It is nearly certain that next year one out of every four cars will be involved in an accident.[8] The owners of the other three cars will pay premiums which contribute to the loss payment attributable to the one. This element of risk sharing is basic to the concept of insurance. The problem is to balance the contribution fairly, and the system seeks to do this by requiring those classes of drivers who are involved in more accidents to contribute more to the payment of losses.

The present classification system is a compromise between two different but related objectives: to group together those persons who have similar loss potential characteristics and to construct a rating system which is not so complex as to be totally unwieldy and so expensive to some groups that it places the cost of automobile insurance beyond their ability to pay.[9] Despite criticisms,

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[8] *See* NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 40 (1968).

[9] If no objective criteria were used and companies were allowed to individually rate each person, the expense of evaluating a risk on an individual basis would be prohibitive; and many persons would inevitably be dissatisfied with the company's evaluation of their individual loss potential. Some of the bitterest complaints auto insurers receive from their policyholders is when the original class rate of an insured is increased under a merit rating plan which bases part of the rate on the individual driving performance of the insured. Under "merit rating" the basic classifications are modified by factors dealing with involvement in certain kinds of accidents and convictions for certain moving violations. For a further discussion of rate making and rating classifications, see *Auto Rates: The Big Picture,* 45 J. AM. INS. 24 (1969).

the system has achieved a reasonable balance between the conflicting interests of different policyholders. The system attempts to equitably place each driver in a classification which reflects his relative loss potential, thereby avoiding undue subsidization by other policyholders.

Proposals for new marketing methods, currently a subject of controversy, involve "mass merchandising" of automobile insurance. Under one variation of this practice, employees of a given employer, union members, professional and trade association members, or other relatively large groups of buyers are sold automobile insurance at a reduced rate based primarily on expenses saved in the cost of selling and servicing such policies.

The question is whether it is "unfairly discriminatory" to charge a lower rate to some policyholders based solely on the method by which the insurance is sold rather than on a lower loss potential. Some of the mass merchandising plans now in use avoid this issue,[10] while others meet it directly.[11] In deciding this issue, the insurance regulator should examine the effect these plans will have on those who have primary interests in auto insurance. Obviously, those policyholders who receive a cost reduction are benefited by the program. Policyholders who are not members of the group are not benefited but, on the other hand, neither are they placed in a worse position. To the extent some members in the group might not otherwise purchase insurance or might buy lower limits of liability, claimants may be benefited. If the technique proves successful and gains the necessary support,[12] it could

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[10] An example is the Personal Security Plan which has been developed by Transportation Insurance Company (a member of the Continental National American Group). Transportation is the only member of the Group which writes mass merchandised business. It issues individual policies which are individually rated and issues the policies at a reduced cost. Persons who are not in the mass merchandised group can theoretically obtain the same insurance if they can find an agent who is willing to write a policy at the reduced commission rate. Since Transportation does not write any policies at other than the reduced rate, no issue of discrimination can arise. For details of the plan see McConnell, *Payroll Deduction Auto Insurance—What It Means, How It Works*, INSURANCE, Oct. 19, 1968, at 73.

[11] An example is the "Group Automobile Agreement" between Community Insurance Company and the Credit Union League. Community issues insurance to the individual employees at a reduced rate, but it will not offer the same rate to its other individual policyholders outside of the group. The Michigan Attorney General ruled that that specific plan was not unfairly discriminatory. 4584 OP. MICH. ATT'Y GEN. (1968).

[12] For an interesting account of a seminar which features many persons with

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spread to increasing numbers of future buyers of insurance. It has been suggested that the wide use of this marketing technique might actually make it easier for some people to obtain insurance.

The insurance regulator should also consider the effect mass merchandising will have on secondary interest groups. Some companies will not be able to compete effectively for this type of business. Many agents who presently sell individual automobile policies will find their clients switching to another agent who services a mass merchandising program. Mass merchandising agents will receive smaller commissions per policy, but, on the other hand, this loss may be remedied by increased volume. These secondary considerations will have to be weighed and evaluated in terms of the greatest benefit to the aggregate of all interests.

The insurance laws also require that rates not be "excessive" or "inadequate". It is in this area that conflict between the various interest groups is most pronounced, making a balanced approach to regulation imperative. Policyholders want to obtain insurance at the lowest possible cost, but company management must charge rates high enough to earn a reasonable profit. Without profit there can be no return to investors and no growth of surplus, and the company's ability to insure future buyers is therefore reduced.[13] If rates are lower than they should be, companies understandably become selective sellers. From the claimants point of view, insurance rates must be high enough so that the insurer is financially able to make prompt and equitable claim payments.

It is in this area that the present regulatory system has often faltered. If only because of its size, the most influential primary interest is possessed by the current buyer group. Although present buyers often have interests as claimants, as future policyholders, and as investors, their most immediate concern is the policy rate. This group has been able to exert an inordinate amount of pressure on insurance commissioners to keep the price of insurance down. The result has been inadequate rates in many states, parti-

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conflicting views on mass merchandising of automobile insurance, see *Seminar on Group Sales Shows Sharp Conflict in Views*, NAT'L UNDERWRITER, Dec. 20, 1968, at 1.

[13] For example, from 1965 to 1975 it is estimated that private passenger automobiles in use will increase from about 75 million to an estimated 97 million. *A Look Ahead to 1975*, 42 J. AM. INS. 1 (1966).

cularly where the insurance commissioner is required to approve any rate increase, or is, for practical purposes, exercising such power.

A company may respond to inadequate rates in various ways. For one thing, it can attempt to lower its expenses. To the degree that this means curtailment of service, no one ultimately benefits. Also, the company naturally tends to become more selective in the risks which it is willing to accept and renew. This causes some present policyholders to lose their insurance at renewal time and makes it more difficult for some persons to obtain the coverage they want. Depending on the degree and duration of rate inadequacy, the solvency of companies can be threatened and the availability of insurance can be seriously limited.

Many problems faced by auto insurance today are a direct result of inadequate rates. If the system had effectively balanced the conflicting interests of all persons with primary interests in auto insurance, some of these problems would never have developed. For this reason, insurance commissioners and companies are looking more favorably upon open competition rating laws similar to that adopted by California. Under such provisions, the companies do not file their rates with the insurance commission. If a reasonable degree of competition is present, no rate will be held excessive; and no rate will be held inadequate unless it endangers the solvency of the company, discourages competition, or tends to create a monopoly.[14] The effect of this type of law is to permit the natural forces of competition to balance the interests of the primary groups.

Federal regulation is also being considered as a possible means of correcting the shortcomings of state regulation. At present, the antitrust laws are not applicable to the insurance industry to the extent that it is state regulated. This conditional exemption from federal jurisdiction could be removed by amendment or repeal of the McCarran Act.[15]

One radical proposal would make all insurance companies federal corporations, establish a federal insurance department, and

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[14] McBride-Gunsky Insurance Regulatory Act, ch. 9, CAL. INS. CODE § 1852(a) (West 1947).

[15] 15 U.S.C. §§ 1011-1015 (1945) (also known as the Insurance Antitrust Moratorium Act, the McCarran-Ferguson Act and Public Law 15).

thereby prohibit state regulation.[16] This proposal would merely substitute a new body of regulators for the existing ones, but would not alter the regulatory system's basic form.

Another proposal would simply repeal the McCarran Act and subject the insurance industry to federal antitrust laws. This approach would clearly impair the ability of companies to gather credible data for rating purposes and could create new problems for insurers in the areas of mergers, interlocking directorates, and payments to insurance brokers.[17] These problems would make a total shift to the federal antitrust laws unlikely.

A suggested compromise proposes that only automobile insurance rates, rating plans, and rating systems be subject to federal antitrust laws. An appropriate exemption from the Sherman Act would permit rate making through rating bureaus unless the activity unreasonably restrains competition with nonmembers of the bureau.[18] Under this proposal, bureaus would be open to all companies willing to pay the bureau fee and submit their experience in a usable form. The latter would be a problem inasmuch as the bureaus could not force members to use standard forms or classification systems. Of course, any agreement to fix prices would be prohibited.

At the present time rating bureaus not only determine the "pure premium"[19] necessary to pay losses, but also the premium necessary to cover investigation and defense costs, administrative expenses, agents' commissions, advertising, profit and con-

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16 Support for a federal regulatory system has come from a few insurance commissioners [Massachusetts (1865) and Wisconsin (1895)]; a U.S. Treasurer (1871); the Dept. of Commerce (1904); Congressmen (the "Platt Bill" in 1897); a U.S. President (Roosevelt, 1904); and industry spokesmen (1892, 1905, 1906 and 1909). *See* Robbins, *Federal v. State Supervision of Insurance*, 25 PROCEEDINGS OF THE CASUALTY ACTUARIAL SOC'Y 313-338 (1938-39).

17 *See* Glassie, *Insurance and the Robinson-Patman Act Revisited*, 1957 INS. L.J. 85, 95; Hansen, *Merger of Insurance Companies and Antitrust Law*, 1958 INS. L.J. 782; STAFF REPORT OF THE ANTITRUST SUBCOMMITTEE OF THE HOUSE COMMITTEE ON THE JUDICIARY, 89th CONG., 1st SESS., INTERLOCKS IN CORPORATE MANAGEMENT (1965).

18 This proposal was made by Donald P. McHugh, Vice President and General Counsel of State Farm Mutual Automobile Insurance Company as part of an address delivered in Philadelphia on Oct. 18, 1967 and as part of a statement on July 18, 1968 before the National Association of Insurance Commissioner Rates and Rating Organization Subcommittee. More recently, on March 4, 1969, Mr. McHugh presented his proposal to the Senate Judiciary Antitrust Subcommittee.

19 "Pure premium" means the amount of money required to pay losses covered by the insurance without taking into account the cost and expense of operation of the insurance company. LEVEY, A HANDBOOK OF PERSONAL INSURANCE TERMINOLOGY 445 (1968).

tingencies. Under this proposal for qualified federal regulation, the bureaus could still determine "pure premium", but there is some question as to whether they could legally determine the portion of premium needed for expenses, profit and contingencies.

Larger companies have broad bases of experience from which to draw their own data. They may not find it worthwhile to support a bureau. Smaller companies may not have the competence to utilize the "pure premium" developed by bureaus to establish their own rating plans. Perhaps, as in other industries, the smaller companies would follow the trends of the larger companies.

The application of federal antitrust law as a means of regulating insurance rates is roughly equivalent to regulation under a California-type rating law. Concern is expressed in some quarters that rates would skyrocket if left solely to the forces of competition. Experience in states which follow the California approach has demonstrated that this does not happen. Rate levels may initially rise where they have been inadequate. But the forces of competition are strong, and there are ample inducements, pressures and restraints for companies to price their product at the lowest competitive level consistent with their ability to make a reasonable profit.

There is one significant difference between rate regulation under federal antitrust law and the California-type rating law. Under the California-type law, there is an explicit provision that rates must not be unfairly discriminatory. This requirement would not be so explicit under existing federal antitrust law.

The Clayton Act, as modified by the Robinson-Patman Act,[20] prohibits "discrimination" in price between purchasers of commodities of like grade and quality where the effect may be to substantially lessen competition. In all likelihood, insurance will not be considered a commodity;[21] but if the term "commodity" is

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[20] 15 U.S.C. §§ 12-27 (1914); 29 U.S.C. § 52 (1914).

[21] There is substantial authority to support the view that intangibles and services are not "commodities", although there is no specific ruling that insurance is not a commodity. See Tri-State Broadcasting Co., Inc. v. United Press Int'l., Inc., 369 F.2d 268 (5th Cir. 1966) (news information service); Columbia Broadcasting System, Inc. v. Amana Refrigeration, Inc. 295 F.2d 275 (7th Cir. 1961) (television advertising); General State Products Corp. v. Struck Construction Co., 132 F.2d 425 (6th Cir. 1942) (building contract); County Theatre Co. v. Paramount Film Distribution Corp. (D.C. Pa. 1956) (licensing of motion pictures); Informal Opinion of Federal Trade Commission, 81 CONG. REC. 23336 (1937) (advertising in trade journals).

construed by the courts, or the law is amended by Congress, to include insurance, th: next question is whether all insurance policies are "of like grade and quality," regardless of the purchaser of the policy. In other words, would the insured's probability of loss be considered in determining the grade and quality of the insurance? If the answer is yes, then the insurer may not discriminate between purchasers of insurance in the same classification. The question would then become: What is a proper classification of insurance? If the present classification system does a reasonable job of grouping together drivers with similar loss potentials, it will meet the federal standards and also balance the interests of the different policyholders.

MARKET AVAILABILITY

Closely related to the cost of automobile insurance is the problem of the driver who cannot readily obtain the insurance he wants from a desirable insurer. The present system does a reasonably good job of providing an available market for most drivers.[22] Some drivers, however, present a loss potential substantially higher than generally anticipated for their rate classification. That fact must be recognized even though the rates for a given classification normally reflect the loss potential of the higher than average risk as well as the lower than average risk within that classification. If a company writes a disproportionate number of high risks, its losses will be higher than contemplated by its rates and it will not be able to make even that modicum of profits which the rates theoretically allow. The problem is compounded when rates are artificially depressed by regulation.

Here again, regulation is faced with opposing interests. The influence of the present applicant for insurance is great because, although the driving of an automobile is legally considered a privilege in most states,[23] the public generally regards it as a social and economic necessity. The popular view of the function of automobile insurance now places as much importance on the financial protection of injured third parties as it does on affording the driver protection from the financial consequences of his negligence.

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[22] It is estimated that 97.5% of the drivers insured obtain insurance on the voluntary market. *See Can't Get Auto Insurance*, 44 J. AM. INS. 26 (1968).

[23] *Driving Is a Privilege*, 39 MICH. ST. B. J. 53 (1960).

Response and adjustment to this changing situation has not been lacking. Both voluntary and regulatory action has been taken to protect the interests of those who cannot easily secure insurance in the regular market. This has been accomplished by (1) limitations on practices in the voluntary market,[24] and (2) creation of facilities to serve the involuntary market.[25]

Historically, automobile insurance policies have given both the insured and the company the right to cancel. It is reasonable to believe that insurers have exercised this contract right only for reasons believed relevant to hazard potential. Nonetheless, substantial criticism by the public indicates that many people believe insurance companies frequently cancel policies for unjustifiable reasons. In response to this criticism many companies have voluntarily limited their right of cancellation. The member companies of the two major rating bureaus[26] have agreed that after a policy is in force for sixty days the company will not cancel unless the premium is not paid or a driver's license or car registration has been suspended.[27]

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24 The voluntary market means that the insurance company has a right to accept or reject an applicant.

25 The involuntary market means that except for a limited number of reasons, the insurer must accept the applicant.

26 The Mutual Insurance Rating Bureau and the Insurance Rating Board.

27 The provision reads as follows:

After this policy has been in effect for 60 days, or, if this policy is a renewal, effective immediately, the company shall not exercise its right to cancel unless

1. the named insurer fails to discharge when due any of his obligations in connection with the payment of premium for this policy, or any installment thereof, whether payable directly to the company or its agent or indirectly under any premium finance plan or extension of credit; or
2. the driver's license of the named insured or any other operator who either resides in the same household or customarily operates an automobile insured under this policy has been under suspension or revocation at any time during the policy period and, if this policy is a renewal, or continuance, also at any time during the 180 days immediately preceding the effective date; or
3. the registration of any automobile owned by the named insured has been under suspension or revocation at any time during the policy period, and, if this policy is a renewal or continuance, also at any time during the 180 days immediately preceding the effective date; provided, however, the company shall have the right to modify any physical damage coverage afforded by this policy (except coverage for loss caused by collision) by inclusion of a deductible not exceeding $100 and, if this policy

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In order to extend these guarantees to all auto insurance policyholders, twenty-seven states have enacted laws dealing with cancellation of auto insurance. Of these, six states prohibit insurers from cancelling policies except in instances where the premium is not paid or the insured's license or car registration is suspended.[28] These laws were actively supported by the insurance industry.[29]

Some comment should be made about the "Auto Assigned Risk Plans" which constitute an attempt to strike a balance between the needs of poorer risk drivers and the underwriter's obligation to avoid calamitous loss results. Assigned risk programs

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is written without a fixed expiration date or for a policy period longer than one year, upon any anniversary of the effective date, this policy may be cancelled or modified by the company for other causes.

[28] States which have enacted automobile insurance cancellation laws: Acceptable reasons for cancellation:

California Kentucky New Jersey New York Pennsylvania South Dakota	1. Nonpayment of premium. 2. Suspension of license or registration.
Louisiana Massachusetts	Above two reasons plus fraud or material misrepresentation in application or claim.
Arkansas Delaware Florida Georgia Idaho Illinois Indiana Michigan Minnesota Missouri North Carolina South Carolina Tennessee Washington West Virginia	Above four reasons plus miscellaneous others.
Maryland North Dakota Virginia Wisconsin	No specific provisions.

[29] The American Mutual Insurance Alliance which represents 110 mutual fire and casualty insurance companies has strongly advocated this position. *See There Ought To Be A Law*, 44 J. AM. INS. 12 (1968).

were devised by insurers, with the cooperation of regulators, to provide ready access to coverage in authorized companies for those drivers who found it difficult to get insurance.[30] The technique has been to "assign" to every company a number of the less desirable risks in proportion to the company's auto premiums in the state. Their purpose was to provide liability coverage which would satisfy the requirements of compulsory insurance laws and the financial responsibility laws, and to protect third party claimants.

An interesting approach has been undertaken by insurance companies in Canada.[31] All companies agree to insure every applicant. If a company decides it does not wish to retain a particular risk, it is reinsured in a pool. There have been some operational problems with the Canadian plan and there is considerable controversy as to whether some form of the plan should be adopted in the United States.[32]

That the automobile assigned risk plans have worked for the public benefit seems not to be overly appreciated, and in any event there is a growing demand that they do more.

The more persistant criticisms heard about the operation of assigned risk plans are that the designation "assigned risk" implies a stigma,[33] that too many drivers are not eligible, and, somewhat incongruously, that the coverages available are not adequate. Some states[34] have extended their assigned risk plans to include coverage of the insured's own losses. The insurance industry is considering liberalizing eligibility rules so as to offer insurance to any applicant who possesses a valid driver's license, as well as extending the plans to include first party coverages. The com-

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30 These plans are in effect in all states and the District of Columbia either by statute or by voluntary agreement among the automobile insurers. For a discussion as to the operation of such plans see *Can't Get Auto Insurance, supra* note 22, at 26-28.

31 *See* Whitehouse, *The Canadian Facility,* 18 FED. OF INS. COUNS. Q. 44-45 (1968).

32 *See* L. Runge, *Auto Reinsurance Pool Deserves Thorough Study,* 76 UNDERWRITER REV. 11 (1968) for the effect which such a plan would have on current problems in the United States. For arguments in opposition to the adoption of a "facility" in the United States, see a report of a speech by J. A. Burgoyne, NAT'L UNDERWRITER, Nov. 4, 1968, at 46.

33 Because of the unfortunate stigma that has attached to the name "assigned risk plan", many states are changing the name of the plans to automobile insurance plans.

34 Connecticut and Rhode Island as of the end of 1968.

mon aim now seems to be to provide relatively easy access for many more people to much broader auto insurance coverages.[35] Such betterment, if it is to be achieved with balanced regard to all who have a primary interest in insurance, will require the existence of two conditions, both of which heretofore have been largely absent—the premium rate must be adequate for the risk, and motor vehicle and drivers licensing laws must be effectively enforced.

CONCLUSION

The thesis of this article has been to assert that the ideal philosophy of regulation is to attempt to equitably balance and advance the interests of all persons who have a primary interest in automobile insurance.

This premise, of course, applies with full validity to every aspect of insurance regulation, because separate perfectly legitimate interests, frequently overlapping and often diverse, are inherently interwoven throughout the fabric of the insurance enterprise.

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[35] Much can be done under the present assigned risk plans without going to a pool concept to accomplish this objective. The Virginia plan has streamlined its procedure to make it easier for those whose policies are not renewed on the voluntary market to gain easy access to the plan. Basically, the provisions are as follows:

(a) Companies give 60 days notice to their agents of intent not to review.

(b) When the required notice of intent not to renew is sent to the insured, if the agent is unable to make other arrangements, the company will notify the Virginia Automobile Insurance Plan which will make its facilities available to him.

(c) In so notifying the Virginia Automobile Insurance Plan, the company shall furnish the Plan with information sufficient to enable the Plan to operate with a simplified, short term application.